

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 157 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NOOR MOHMED IBRAHIMBHAI MISTRY

Versus

HEIRS OF MANSURI MARIAMBIBI-

Appearance:

MR NS DESAI for Petitioner

MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 01/08/97

ORAL JUDGEMENT

1. The present petitioner is the original tenant and respondent No.1 is the landlord who purchased the suit premises by registered sale deed, dated 6.2.1974. It appears that the respondent-plaintiff has instituted Reg.C.S.No.37/78 against the tenant in the court of Civil Judge (JD) at Thasara for recovery of vacant and peaceful possession of the suit house on the ground of arrears of

rent and personal and bonafide requirement of the landlord. It was the case of the landlord that the tenant was in arrears of rent from 7.10.74 to 5.10.77 i.e for a period of more than six months and despite valid service of demand notice under section 12(2) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the tenant has failed to pay the amount within the period of one month and he has as well failed to raise any dispute of standard rent under section 11(4) of the said Act by making application for fixation of interim standard rent. The notice, dated 10.10.77 was served by the landlord by registered post to the tenant which was admittedly served on the tenant on 15.10.77 and no reply to said notice was given within 30 days raising any dispute of standard rent therein nor was the demand for arrears satisfied and thus the tenant neglected to pay the rent which he was otherwise liable to pay and incurred liability of eviction.

2. It was under the aforesaid circumstances, that the landlord instituted the aforesaid suit and claimed relief of possession of the suit premises along with arrears of rent. The suit was resisted by the defendant-tenant by filing written statement at Exh.17 and he denied the various contentions raised in the application. He however did not raise any dispute of nonreceipt of notice of demand nor did he file any application for fixation of interim standard rent under section 11(4) of the said Act. However, he contended that even after the institution of suit he has paid Rs.500/towards rent on 5.4.77 by cheque, but unfortunately failed to produce any evidence in support of said averment made in the written statement. The trial court thereupon framed issue and held that the defendant was a monthly tenant at the rate of Rs.25/-p.m. for the suit premises. The trial court, however, recorded the finding that the plaintiff has failed to prove that the tenant was in arrears of rent for a period of more than six months and therefore by judgment and order dated 2.11.1987 it passed decree for arrears of rent but dismissed the suit for possession.

3. Being aggrieved thereby the landlords have preferred Reg.Civil Appeal No.149/87 before the District Court and the 2nd Extra Assistant Judge, Nadiad in Regular Civil Appeal No.149/87 preferred by the landlords partly allowed the same and the order of the trial court insofar as payment of arrears of rent was concerned it was confirmed and further decree was passed directing the defendant to handover to the plaintiff peaceful and vacant possession of the suit premises on or before

30.1.1994.

4. Being aggrieved thereby the petitioner-tenant has preferred present CRA. During the pendency of the present CRA the memo of CRA was amended as per the order passed by His Lordship J.M.Panchal.

5. Mr.N.S.Desai, learned advocate appearing for the tenant has very strenuously urged before this court that the case is directly covered by the decisions reported in 23(2) GLR 928 as well as 24(1) GLR 263 and based on the aforesaid two decisions he submitted that no decree of eviction could have been passed till the interim standard rent was fixed and till the tenant was called upon to make payment of interim standard rent. The tenant can not be called upon to perform impossibility and since no standard rent was fixed even when the dispute was raised in the written statement there was no liability on the tenant to deposit the standard rent. The lower appellate court has agreed with the aforesaid reasoning and came to conclusion that the dispute as to standard rent can be raised within a period of 30 days pursuant to notice issued under section 12(2) by the landlord by replying to notice. He further held that in the alternative on receipt of notice it was open to the tenant to make an application for fixation of interim standard rent under section 11(4) of the said Act. In the present case neither of the steps was taken when the dispute of standard rent was raised for the first time in the written statement. Law on the subject is by this time well established and it is not a matter of controversy or dispute that over a particular period dispute of standard rent can be said to have been raised, it shall have to be raised either in reply to the notice under section 12(2) of the said Act within a period of 30 days from the date of receipt of notice or by making an application under section 11(4) for fixation of interim standard rent. If any of the modes is not preferred and dispute is validly raised in the written statement, the tenant can not get the protection under section 12(3)(b) of the Act and his case shall be squarely governed by section 12(3)(a) of the Act. Very recently in the case of IBRAHIM ABDULRAHIM SHAIKH vs KRISHNAMORARI SRIPATLAL AGARWAL reported in (1995) 1 SCC 265 the Division Bench of the Supreme Court has also taken the view that the tenant specifically disputing standard rent and permitted increases in reply to notice of landlord, paying of all arrears of rent on the first day of appearance and continuing to deposit the same regularly, the tenant was not liable to be evicted. In the facts and circumstances, the tenant was not required to file application for fixation of interim

standard rent within one month of receipt of notice because in the reply to the notice the dispute as to standard rent and permitted increases was raised. However, one of the expeditious actions shall have to be taken by the tenant if it is before issuing notice from the court which would indicate bonafides of the tenant. It is expressed that there is a provision for issuing a demand notice under section 12(2) of the Rent Act and once such notice is issued by the tenant expeditious action is expected of it, namely, disputing higher rent in reply to the notice or of moving the court under section 11(4) of the Bombay Rent Act for fixating of interim standard rent. This decision fully supports the view which is taken by this court and it can not be said that the law on the subject is changed by the Supreme Court. The court in the aforesaid case held that :

"therefore by necessary construction of sections 11 & 12 of the said Act together what was intended was that the tenant should dispute the standard rent or permitted increases within one month from the date of the receipt of the notice and then file the application under section 11(3) of the Bombay Rent Act. It would not appear to have been meant that the application under section 11(3) should also be filed within one month from the date of receipt of the notice."

In fact, both the steps are not required to be taken for the purpose of raising a dispute of standard rent or permitted increase. Either there can be dispute raised of standard rent under section 12(2) or application for fixation of interim standard rent under section 11(3) of the said Act. That being the position of law and the tenant having failed to comply with the said requirement of law and since the tenant was in arrears of rent for for a period of more than six months and failed to pay up the arrears of rent within stipulated time the tenant has incurred the liability of eviction and the lower appellate court was fully justified in passing the decree of eviction. Rule is therefore discharged. Ad-interim relief is vacated. No costs.

6. However, in case the tenant wants some reasonable time to vacate the premises, on his filing undertaking in this court within six weeks from today on oath making following stipulations therein, time to vacate the premises is granted upto 31.12.1999:

(i) That the tenant and his family members are only in the possession of the premises and that all of them shall handover the peaceful and vacant possession to the landlord on or before 31.12.1999.

(ii) The tenant and/or his family members shall not induct anyone else into the possession nor shall they transfer or alienate their rights to anyone

(iii) The tenant shall pay up all the arrears of rent till the decree was passed by the lower appellate court and shall continue to pay the mesne profits at the very rate at which the standard rent was fixed by the trial court.

7. If the undertaking as aforesaid is not filed in this court within six weeks from today and copy thereof is not given to the other side extended time to vacate which is granted shall not operate and it will be open to the landlord to execute the decree in accordance with law.

8. In the result, rule is discharged. Ad-interim relief stands vacated subject to aforesaid clarification. No costs.